

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

Common Cause Georgia, as an )  
organization, )  
Plaintiff, ) Case No. 1:18-CV-05102-AT  
v. ) The Honorable Amy Totenberg  
Brian Kemp, in his official capacity as )  
Secretary of State of Georgia, )  
Defendant. )

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE  
THE DECLARATIONS OF MICHAEL MCDONALD, EDGARDO  
CORTÉS, AND KEVIN MORRIS**

Defendant's motion to strike the Declarations of Michael McDonald, Edgardo Cortes, and Kevin Morris (collectively, the "Declarations") should be denied for the reasons set forth below.

The information provided in the Declarations is highly relevant and does not violate the Court's Order. Defendant's chief complaint seems to be that Plaintiff's witnesses reviewed data *in addition* to the data specifically referenced in the Court's order. However, as explained by Dr. McDonald, in order to meaningfully analyze the data, Dr. McDonald needed to review not only the number of provisional ballots cast (the data provided by Defendant) but also the number of total ballots cast (not provided by Defendant). *See* McDonald Decl. Indeed, Defendant's own expert

seems to agree that the data provided by Defendant was not sufficient to analyze statistical significance. *See Decl. of John Alford, Doc. 45 at ¶ 6.* Rather than merely stating as such in response to the Court’s Order—as Defendant did—Plaintiff downloaded the additional data necessary from Defendant’s own website.<sup>1</sup> Plaintiff’s Declarations are thus not irrelevant.

Nor do the Declarations contravene the Court’s Order. While the Court ordered Plaintiff to analyze the data submitted by Defendant, at no time did the Court order that Plaintiff could not use other data to analyze Defendant’s data, or that Plaintiff could not submit additional evidence in support of Plaintiff’s motion. Plaintiff submitted highly relevant evidence to the Court: (a) the Declaration of Dr. McDonald, who analyzed the data provided, using other publicly-available data necessary to the analysis; (b) the Declaration of Mr. Morris, who explained the method by which he obtained this additional data; and (c) the Declaration of Mr. Cortés, who responded directly to the Court’s concerns raised at the November 8 hearing about whether relief in this case could actually have an impact on the outcome of the elections. This evidence is all highly relevant.

In addition, Rule 12(f) does not apply here. That rule provides that a court may “strike from a pleading . . . any redundant, immaterial, impertinent, or

---

<sup>1</sup> See <https://results.enr.clarityelections.com/GA/91639/Web02-state.220747/#/>.

scandalous matter.” Defendant has not moved to strike a pleading and the rule is therefore inapplicable. *See, e.g., Sum of \$66,839.59 Filed in the Registry v. United States IRS*, 119 F. Supp. 2d 1358, 1359 n.1 (N.D. Ga. 2000) (noting that a motion to strike under Rule 12 is not the proper method for challenging an affidavit); *see also* 2 Moore’s Federal Practice § 12.37[2] (2018).

For these reasons, Plaintiff respectfully requests that the Court consider the Declarations.

This 10th day of November, 2018.

DLA PIPER LLP

By: /s/ Christopher Campbell

Christopher G. Campbell  
One Atlantic Center  
1201 West Peachtree Street, Suite 2800  
Atlanta, GA 30309-3450  
(404) 736-7808  
[christopher.campbell@dlapiper.com](mailto:christopher.campbell@dlapiper.com)

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Robert A. Atkins

(*pro hac vice* application pending)  
NY Bar No. 2210771

Farrah R. Berse

(*pro hac vice* application pending)  
NY Bar No. 4129706

Makiko Hiromi

(*pro hac vice* application pending)  
NY Bar No. 5376165

William E. Freeland

(*pro hac vice* application pending)

NY Bar No. 5450648  
Melina M. Meneguin Layerenza  
(*pro hac vice* application pending)  
NY Bar No. 5559240  
1285 Avenue of the Americas  
New York, NY 10019-6064  
(212) 373-3000  
[ratkins@paulweiss.com](mailto:ratkins@paulweiss.com)  
[fberse@paulweiss.com](mailto:fberse@paulweiss.com)  
[mhiromi@paulweiss.com](mailto:mhiromi@paulweiss.com)  
[wfreeland@paulweiss.com](mailto:wfreeland@paulweiss.com)  
[mmeneguin@paulweiss.com](mailto:mmeneguin@paulweiss.com)

BRENNAN CENTER FOR JUSTICE AT NEW YORK  
UNIVERSITY SCHOOL OF LAW

Myrna Pérez  
(admitted *pro hac vice*)  
NY Bar No. 4874095  
Lawrence D. Norden  
(*pro hac vice* pending)  
NY Bar No. 2881464  
Wendy R. Weiser  
(*pro hac vice* pending)  
NY Bar No. 2919595  
Maximillian Feldman  
(*pro hac vice* pending)  
NY Bar No. 5237276  
120 Broadway, Suite 1750  
New York, NY 10271  
(646) 292-8310  
[perezm@brennan.law.nyu.edu](mailto:perezm@brennan.law.nyu.edu)  
[nordenl@brennan.law.nyu.edu](mailto:nordenl@brennan.law.nyu.edu)  
[weiserw@brennan.law.nyu.edu](mailto:weiserw@brennan.law.nyu.edu)  
[feldmanm@brennan.law.nyu.edu](mailto:feldmanm@brennan.law.nyu.edu)

*Attorneys for Plaintiff*